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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

KATHLEEN SINACORI, Plaintiff and Appellant, v. JAMES VOORHEES, Defendant and Respondent.	H033410 (Monterey County Super. Ct. No. M46550)

I. STATEMENT OF THE CASE

In November 1999, John Sinacori (Sinacori) filed an action against James Voorhees (Voorhees) and others alleging breach of contract. In 2005, he amended the complaint to assert additional causes of action, including breach of fiduciary duty, concealment, and conversion. In 2006, Sinacori died, and Kathleen Sinacori, his wife (hereafter plaintiff), continued to prosecute the action. Thereafter, the court granted summary judgment in favor of Voorhees on all claims except those for breach of fiduciary duty, concealment, and conversion. After a bench trial, the court ruled in favor of Voorhees on those claims and entered judgment.

On appeal, plaintiff contends that the court erred in not ruling in her favor on these claims. She also argues that the court's statement of decision was inadequate.

We affirm the judgment.

II. BACKGROUND[1]

In an "Operating Agreement" (the Agreement), dated August 1993 and signed in February 1994, Voorhees, Sinacori (acting as president of his company Montallegro Applied Sciences, Inc.), Monterey Technologies, Inc. (Monterey), Coryphaeus Software, Inc. (Coryphaeus), and IN-MAR-TECH Australia Pty. Ltd. (IN-MAR-TECH) created a company called Illusion Technologies L.L.C. (IT). The parties had been involved in producing something called a driving simulator, and IT was created to develop and market the simulators.[2] Under the Agreement, each partner had a 20 percent interest in the company and a 20 percent share in any distributable cash, profits from sales, and income.

On January 17, 1995, IN-MAR-TECH wrote a memo to the other IT partners concerning the "U/Mass Negotiation." According to the memo, the University of Massachusetts (the University) wanted to move forward with negotiations for a simulator but lacked enough money to complete stage one of the project. The University wanted to lease a simulator to be built for five years at $20,000 per year. IN-MAR-TECH was

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[1] Plaintiff represents herself in propria personal on appeal. Although she narrates a compelling story of deceit, deception, misrepresentation, and fraud by Voorhees against Sinacori, much of it is unsupported by citation to the record or involves inferences from the evidence that are inconsistent with the court's judgment.

Moreover, our ability to independently summarize the background is hampered by the limited record before us. Plaintiff proceeded by way of an appendix. (Cal. Rules of Court, rule 8.124.) Voorhees also filed an appendix. Together, the two appendices contain only a fraction of the documentary evidence considered by the trial court and none of the testimony of witnesses, including Voorhees and Sinacori, whose deposition testimony was admitted in lieu of live testimony.

Thus, our summary is somewhat disjointed because it is based on a chronological review of only the documents in the record.

[2] Before IT was formed, IN-MAR-TECH had independent subcontracts with Voorhees's consulting firm Advanced Simulation Engineering (ASE), Monterey, John B. Sinacori Associates, and Coryphaeus, all of which were related to the design and production of a driving simulator.

eager to conclude the first sale, but that would mean the other IT partners might have to defer getting paid for work they had performed. However, IN-MAR-TECH offered to underwrite the lease provided the other IT partners agreed to certain conditions. In particular, the University contract would be with IT, and Voorhees was to manage the project and prepare a statement of work to which the University had to agree and incorporated into the contract before any order was raised. IN-MAR-TECH proposed to use the money that it would get under stage one of a University contract to pay Coryphaeus for work that it had done. IN-MAR-TECH would separately be compensated for underwriting the lease payments, and from that compensation, it would pay Voorhees. Another condition was that Voorhees, Monterey, and Sinacori defer receipt of the money owed to them.

Sinacori immediately rejected this proposal.[3] In a fax dated January 17, Sinacori thought that IN-MAR-TECH, not IT, should be in charge because it would be performing most of the work and had the management skills and personnel. He opined that IT lacked management skills and had a poor track record and should already have been dissolved. He considered IT "a poor vehicle for aligning five competitors into a forced partnership."

Sinacori further pointed out that IN-MAR-TECH owed money directly to the original subcontrators, whose contracts were not assigned to IT or anyone else. Moreover, IN-MAR-TECH had agreed to pay him $20,000 per simulator for certain software and its modification. "If I.T. takes the U/Mass contract they become obligated to me . . . for its use. The software was copyrighted with permission given to [IN-MAR-TECH] for its use. Permission was not given to assign or give in any way this software to anyone else. [¶] As such, I.T. has an obligation to pay me money for its use in a simulator whether or not modifications to it are necessary or it is in violation of the copyright laws. I did not give the software away. I sold it to a specific party. I am well

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[3] It does not appear that any other IT partner accepted this proposal.

used to using the courts to protect my interests. You may convey this to I.T. and suggest that they consider this in the decision as to who will prime the U/Mass contract."

Later in January, Sinacori wrote to IN-MAR-TECH. Concerning the software, he proposed that they split ownership. Concerning the "U/Mass bid," he noted how compensation had been projected and speculated that it had been prepared by Voorhees. Sinacori felt that IT would soon be dissolved because IT could not raise capital and Voorhees was not a fair or objective manager. He observed that IT's dissolution could be hastened if IN-MAR-TECH or he or both withdrew. Alternatively, IT could continue simply as a marketing agent for IN-MAR-TECH.

On or around February 27, 1995, University officials signed two purchase orders totalling $195,000, which stated that they were for the downpayment on a $425,000 simulator from IT. There is also a University of Massachusetts "Trust Fund Requisition," dated March 3, 1995, listing IT as the "suggested vendor" for a "Driving Simulator" costing $425,000.

The record indicates that around this time, IN-MAR-TECH was experiencing financial problems. By March, it was unclear whether it would remain a partner in IT. On March 21, 1995, Voorhees sent a three-page fax to Coryphaeus president Stephen Lakowske, Monterey president Michael McCauley, Robert Hennessey, and Rob Johnston. The fax coversheet reflected an IT letterhead but listed only Advanced Simulation Engineering (i.e., Voorhees's consulting firm), Coryphaeus, and Monterey. In a brief message, Voorhees said that he had sent a letter to IN-MAR-TECH summarizing "the situation," but he doubted that IN-MAR-TECH would agree to his proposal. He opined, "We may have to offer to buy the [trailer simulator] ourselves . . . or negotiate a price with them less than the 466K. I guess we will find out."

The other two pages of this fax are Voorhees's letter to IN-MAR-TECH also dated March 21, 1995. Unlike the cover sheet, the letter was on formal IT letterhead and listed all of the original partners. In it, Voorhees discussed IN-MAR-TECH's proposed sale of a simulator trailer to Martin Marietta Canada Limited (Martin Marietta). He said the trailer incorporated software from Monterey and Coryphaeus, for which they were entitled to be paid. He explained that the originally quoted price for the software did not include certain expenses that the IT partners had incurred, but he noted that they had been willing to defer payment and recover it from the sale of additional simulators that they expected to build with IN-MAR-TECH. However, Voorhees continued, "[s]ince future work beyond the University of Mass [*sic*] simulator appears to be in question at this time," the previously quoted price needed to be adjusted so that the IT partners could recover all of their expenses from the first sale to Martin Marietta. Voorhees acknowledged that paying IT partners more now would reduce IN-MAR-TECH's net gain, but he pointed out that doing so would settle IN-MAR-TECH's debts and allow the IT partners to move on, unhampered by IN-MAR-TECH's financial troubles. Voorhees opined that "[t]he U. Mass [*sic*] deal, for example, is an opportunity for [IN-MAR-TECH] to realize a profit that would otherwise have been impossible given the continued existence and level of financial obligations to the U.S. team members. This way, the debt is paid and we can all focus on building the U. Mass simulator quickly and profitable [*sic*] once the contract is awarded. Removing long standing debt to the U.S. partners certainly allows other potential deals to be re-evaluated objectively as well with [the] possibility of working jointly." The record does not indicate IN-MAR-TECH's response to Voorhees's proposal.

The record does contain a copy of a document entitled "Statement of Agreement." It is dated March 29, 1995, and appears to have been written by Voorhees, who signed it. Although it has spaces for all the other IT partners to sign, none of them did. This proposed agreement briefly summarized the relationship between IN-MAR-TECH and the other IT partners before and after IT was formed. It stated that IT has been marketing the simulator around the world, but no purchase orders have been received to date.

However, "[i]t is understood that a purchase order is pending from the University of Massachusetts for a [simulator] for a contract value of US$425,000. The sale of the marketing trailer to [Martin Marietta] is also pending at the time of this agreement."

The proposed agreement acknowledged that IN-MAR-TECH had given notice of its intent to withdraw from IT. Thus, the purpose of the agreement was to establish the amounts that IN-MAR-TECH owed to the IT partners and thus provide for them to get paid from the simulator sale to Martin Marietta. Specifically, Martin Marietta would be required to pay the whole amount that IN-MAR-TECH owed directly to IT, which would then transfer the specific amounts owed to each IT partner. Thus, IN-MAR-TECH's debts would not be deferred "until the end of the U.Mass contract."

On March 29, Ian Le Page of IN-MAR-TECH sent a fax to all IT partners acknowledging the "Statement of Agreement prepared by [Voorhees]." He said it would help focus discussion but asked that it not be circulated. He acknowledged that IN-MAR-TECH was withdrawing from IT and the importance of the Martin Marietta sale, which would allow payments to partners. However, he said that that sale is between Martin Marietta and IN-MAR-TECH, and he did not consider it appropriate for Martin Marietta to make direct payments to IT. Le Page further stressed that IN-MAR-TECH wanted the ability to sell simulators in the future and proposed a formula for fairly compensating each IT partner. Apparently, another agreement was drafted and circulated, but it is not part of the record.

In response, Sinacori wrote to Le Page and congratulated him, saying his strategy had worked and that IN-MAR-TECH could now pursue the sale of simulators to Martin Marietta and the University and others.

On March 30, 1995, Monterey, Voorhees, Coryphaeus, and Montallegro withdrew from IT, and it dissolved on March 31, 1995.[4] Thereafter, Voorhees, Monterey, and

[4] The Agreement provided that the company "shall be dissolved upon the occurrence of any of the events identified in Section 1.4." That section provided, in

Coryphaeus regrouped and formed a new company also named IT (the New IT). By April, the simulator sale to Martin Marietta still had not taken place. On April 17, Sinacori wrote to Le Page. He believed that IN-MAR-TECH had "won [the] battle" and had a "clear path" to pursue sales to Martin Marietta and the University. However, on April 20, 1995, the University sent its purchase orders to the New IT.

On May 14, 1995, Voorhees sent a fax to Sinacori. Voorhees was responding to a previous fax from Sinacori, which is not part of the record. Voorhees opined that Sinacori had "mixed up" a couple of things. "My request in February for recurring costs were for the potential sale of the trailer, and I am using your 20K recurring number for that if [IN-MAR-TECH] can sell it. The U. Mass contract is a totally different thing[.]" He continued, "Since we spoke last, as you know IT was dissolved by the withdrawal of [IN-MAR-TECH] on 31 March, everyone sent me letters of withdrawal and [Coryphaeus and Monterey] and I reconstituted with just the three of us as the [N]ew IT."

Voorhees explained that "[a]s to the current U.Mass contract, we are doing that with just three companies in the [N]ew IT and we are not using any systems or software developed by [IN-MAR-TECH] or [Sinacori]. We are using a totally new set of dynamics that have been developed . . . by another company that are greatly simplified that fits the level of simulation offered to the UMass [*sic*] in a non-motion base setup." Voorhees said that "sale of the trailer is (I guess) proceeding, [IN-MAR-TECH] is in direct contact with Martin and I will try to get your money out of the sale along with ours."

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relevant part, that the Company "shall continue for fifteen (15) years . . . unless sooner dissolved and be terminated upon the happening of any of the following events: [¶] 1.4.1 The passage of one hundred twenty (120) days after the death, retirement, expulsion, withdrawal, adjudication of incompetency or bankruptcy or dissolution of a Member, if the Members fail to continue the Company's business within such 120 day period by unanimous vote. [¶] 1.4.2 A unanimous vote of the Members to dissolve the Company."

Around this time, IN-MAR-TECH went into receivership, and the New IT retained a firm to recover the money that Voorhees had previously sought to obtain when and if IN-MAR-TECH completed the simulator sale to Martin Marietta, including money that was owed to Sinacori. In August, 1995, Sinacori also retained someone to represent his interest in software that he said he co-owned with IN-MAR-TECH. In early September 1995, the New IT purchased the trailer simulator from the receiver along with the rights to simulation software. It then sold the trailer to Battelle Memorial Institute (Battelle) for $1.25 million.

In November 1995, Mark Korda, the receiver for IN-MAR-TECH, wrote to Sinacori's representative concerning his claim to an interest in the software. Korda asserted that the simulator sold to the New IT included only the property of IN-MAR-TECH. Korda further said it was his understanding that the New IT was addressing Sinacori's software claim and had reached a preliminary agreement with him.

On June 26, 1996, Sinacori wrote the New IT and demanded an accounting since its creation. He thought the dissolution of IT and its reformulation without him was contrived to take advantage of potential sales and deprive Sinacori of his share of the proceeds. Sinacori further complained about the New IT's purchase of the trailer simulator from the receiver and subsequent sale to Battelle and said he had warned the receiver that he did not hold clear title to software used in that simulator. He noted that the receiver had said there was a preliminary agreement between the New IT and Sinacori to resolve Sinacori's claim. However, Sinacori said that was not true. Consequently, Sinacori argued that if the New IT intended to use the software in the simulator in any way, he was entitled to compensation.

In November 1999, Sinacori commenced this action against Voorhees for breach of the Agreement. Procedurally, the action stumbled along until 2005. In 2000, the court granted Voorhees's motion to quash the complaint on the ground that the Agreement provided for arbitration in Washington State. However, according to a declaration filed by Sinacori's attorney, Voorhees then hampered arbitration by challenging the arbitrator's jurisdiction and being generally uncooperative. By 2002, the parties agreed to have the arbitrator rule on whether Sinacori's claims were barred by the statute of limitations. The arbitrator ruled that none of the claims were barred, and that the legal action in California, which had been timely filed, had tolled the statute. Discovery proceeded fitfully and was still not completed by 2003. Then, counsel for Voorhees resigned, and Voorhees was unable to pay requisite arbitration fees. By June 2003, arbitration was postponed.

In August 2003, Sinacori obtained an order restoring the Santa Clara County Superior Court's jurisdiction over the lawsuit. In November 2003, the court entered default judgment against Voorhees and in favor of Sinacori. However, in March 2004, the court granted Voorhees relief from default and gave Voorhees time to answer the complaint. In 2005, Sinacori amended the complaint adding numerous causes of action. Thereafter, the court granted summary judgment in favor of Voorhees all causes of action except those for breach of fiduciary duty, concealment, and conversion.

III. THE TRIAL COURT'S RULING

The court ruled against Sinacori on all three of the remaining causes of action. Concerning the claim for breach of fiduciary duty, the court concluded that the sale of simulators to the University and Battelle did not breach the fiduciary duty Voorhees owed before IT was dissolved or thereafter while winding up IT's affairs. The court found that as of March 31, 1995, the date of dissolution, IT had no agreements to sell simulators to anyone. The court also found that there was insufficient evidence to prove that the sale of a simulator "was negotiated or formalized" either before IT dissolved or while IT's affairs were being wound up. The court further found that Sinacori had failed to show any injury from the alleged breach of duty.[5]

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[5] In the statement of decision as originally filed, the court found that the claim for breach of fiduciary duty was barred by the three-year statute of limitations. However,

Concerning the cause of action for concealment, the court concluded that the gravamen was fraudulent concealment, and therefore, it was barred by the three-year statute of limitations for fraud. The court found that Voorhees asked the other IT partners to withdraw, and they did. Then, on April 3, 1995, Voorhees, Monterey, and Coryphaeus formed a New IT, in which Sinacori had no legal or equitable interest. In September 1995, the New IT sold a simulator to Battelle. The court further found that Sinacori had notice of the New IT and learned of the sale to Battelle by November 1, 1995, and thus was aware of information and on inquiry notice that Voorhees had allegedly deceived him by June 26, 1996. Thus, since the complaint was not filed until November 1999, the claim for fraudulent concealment was time-barred.

Concerning the cause of action for conversion, the court concluded that Voorhees was not liable. The court concluded, in essence, that Voorhees had not wrongfully exercised dominion and control over any property owned by Sinacori; and the alleged failure to pay a debt is not conversion. According to the court, the conversion claim was based on software contained in simulators. That software was written by a third party based on Sinacori's mathematical models. Sinacori did not have a copyright interest in the software; and his ideas, equations, and engineering diagrams were not copyrightable or subject to conversion. Moreover, Sinacori did not have an interest in the New IT and would not have become a member had he been given the opportunity.

IV. STANDARD OF REVIEW

On appeal, "[w]e presume there is evidence to support every finding unless the appellant demonstrates otherwise and we draw all reasonable inferences from the record to support the judgment." (*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 420; *Glendale Fed. Sav. & Loan Assn. v. Marina View Heights*

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after further briefing and argument, the court agreed that the four-year statute applied and modified the statement of decision to reflect the findings and conclusions summarized above.

Dev. Co. (1977) 66 Cal.App.3d 101, 152.) A corollary to this rule is that "to be successful on appeal, an appellant must be able to affirmatively demonstrate error on the record before the court." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822.)

V. Breach of Fiduciary Duty

Plaintiff contends that the court erred in finding no breach of duty. She claims that the simulator sale to the University represented a corporate opportunity of IT that Voorhees (and the New IT) usurped in violation of the fiduciary duty he owed to the original partners of IT.

" '[T]he doctrine of corporate opportunity . . . prohibits one who occupies a fiduciary relationship to a corporation from acquiring, in opposition to the corporation, property in which the corporation has an interest or tangible expectancy or which is essential to its existence. [¶] . . . [¶] Three tests have been recognized as standards for identifying a corporate opportunity: the "line of business" test, the "interest or expectancy" test, and the "fairness" test. Under any test, a corporate opportunity exists when a proposed activity is reasonably incident to the corporation's present or prospective business and is one in which the corporation has the capacity to engage. Whether or not a given opportunity meets the requisite relationship is largely a question of fact . . . .' " (*Kelegian v. Mgrdichian* (1995) 33 Cal.App.4th 982, 988-989, italics omitted; see also *Daniel Orifice Fitting Co. v. Whalen* (1962) 198 Cal.App.2d 791, 800 [" 'a director or officer of a corporation may not enter into a competing enterprise which cripples or injures the business of the corporation of which he is an officer or director' "].) "[T]he basis of the doctrine must be found 'in the unfairness on the particular facts of a fiduciary taking advantage of an opportunity when the interests of the corporation justly call for protection.' " (*New v. New* (1957) 148 Cal.App.2d 372, 384-385.) Moreover, if a corporate opportunity has been misappropriated, "the right of recovery resides in the corporation, not its individual stockholders." (*Id*. at p. 389.)

The record does not reflect that plaintiff asserted a "corporate opportunity" theory or asked the court to make findings on that issue or even uttered the phrase "corporate opportunity." However, plaintiff concedes that IT dissolved on March 31, 1995. Moreover, it is undisputed that the sales to both the University and Battelle took place weeks and months after that date. The record does not conclusively rebut the trial court's finding that IT had no agreements to sell simulators before it dissolved. And plaintiff cites no authority for the proposition that a potential sale that was under negotiation at the time of dissolution remains a "corporate opportunity" after the company dissolves and ceases to exist. Nor does plaintiff cite any evidence that Sinacori would *not* have withdrawn from IT had he known that others, including former IT partners, would pursue those sales after IT dissolved. On the contrary, the record shows that Sinacori knew about a possible sale to the University before he withdrew from IT; and before he himself suggested that he and/or IN-MAR-TECH withdraw so that IN-MAR-TECH could pursue the University sale itself. Moreover, Sinacori was critical of IT and Voorhees and expressed relief after it was dissolved.

Under the circumstances, therefore, the short answer to plaintiff's corporate-opportunity theory is that once IT dissolved, the subsequent sales to the University and Battelle did not represent activities that were reasonably incident to IT's "present or prospective business"; at most it was related to possible future business. Moreover, once IT dissolved, it did not have the capacity to take advantage of those new contracts for the sales that eventually took place. Moreover, given Sinacori's attitude toward IT and view that its dissolution cleared the way for IN-MAR-TECH to pursue the sale to the University and the lack of evidence that a sale to Battelle was even contemplated before IT dissolved, we fail to see how or why it was unfair for the New IT to pursue those opportunities after IT dissolved.[6]

[6] Plaintiff makes much of the fact that on March 21, 1995, Voorhees sent a fax to some IT partners but not to Sinacori on IT letterhead that listed only Voorhees's

In the reply brief, plaintiff posits a slightly different theory and argues that the subsequent sales constituted IT's "unfinished business" which Voorhees had a fiduciary duty to wind up for the benefit of IT, even though doing so would necessarily take place after dissolution.[7]

In support of this theory, plaintiff cites *Rosenfeld, Meyer & Susman v. Cohen* (1983) 146 Cal.App.3d 200 (*Rosenfeld*), overruled on another point in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 521, fn. 10.) However, plaintiff's reliance on *Rosenfeld* is misplaced. Indeed, *Rosenfeld* supports the trial court's ruling.

In *Rosenfeld, supra*, 146 Cal.App.3d 200, a company named Rectifier entered into a written agreement in 1969 with the law firm it had selected to bring a major patent anti-trust action. The firm immediately commenced the action and continued to prosecute it for many years. In 1974, as the case got close to trial or settlement, two of the firm's

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company, Coryphaeus, and Monterey; but that fax also included a copy of a letter from Voorhees to IN-MAR-TECH proposing a redistribution of proceeds from the sale of a simulator to Martin Marietta, and that letter was on IT letterhead that included all of the original IT partners. Plaintiff argues that the modified letterhead shows that Voorhees was already trying to deceive Sinacori and plotting to dissolve IT, form the New IT, and then usurp IT's corporate opportunities.

However, the record does not contain any of Voorhees's testimony and thus does not contain any explanation for the letterhead or timing of the sales. Although, as the trial court found, the letterheads and timing may seem suspicious, standing alone they do not establish that there was a wrongful plot to dissolve IT and steal its sales. As noted, Sinacori himself had suggested to IN-MAR-TECH that one or both of them withdraw from IT and cause it to be dissolved so that IN-MAR-TECH could pursue the sales to the University and Martin Marietta. Finally, and more importantly, the modified letterhead and timing of the sales do not establish that IT had binding agreements to sell simulators before its dissolution at the end of March 1995.

[7] Ordinarily, points raised for the first time in a reply brief on appeal will not be considered, absent good cause for failure to present them earlier. (*Jameson v. Desta* (2009) 179 Cal.App.4th 672, 674, fn. 1; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.) Although Voorhees did not have the opportunity to respond to plaintiff's "unfinished business" claim, we nevertheless exercise our discretion to address and reject it.

partners, who had worked exclusively on the case, threatened to withdraw from the firm unless they were allocated a larger percentage of Rectifier's fee. They were confident that Rectifier would follow them if they set up their own firm. The firm made an offer, but the two partners rejected it. In April 1974, they withdrew and formed their own firm. In May, Rectifier discharged the firm and hired the partners' new firm. The partners continued Rectifier's case and settled it. Rectifier paid them compensation and put their percentage of the settlement in an escrow account. Thereafter, the firm sued the two partners, claiming that the Rectifier action was its unfinished business and that the partners breached their fiduciary duties by failing to complete it for the benefit of the firm. (*Rosenfeld, supra*, 146 Cal.App.3d at pp. 208-211.)

On appeal, the court explained, "The concept of unfinished business arises from the rule of law that upon the dissolution of a partnership, the partnership is not terminated but continues to exist for the limited purpose of winding up its affairs and completing all unfinished business." (*Rosenfeld, supra*, 146 Cal.App.3d at p. 216, fn. omitted.) Thus, the court observed that upon dissolution of the firm in May 1974, there were three entities—the dissolved firm that had not yet been wound down; the resulting firm of remaining partners; and former partners' new firm. The court further stated that after dissolution, each partner of the dissolved firm had a fiduciary duty to wind up and complete the firm's unfinished business. And in doing so, each partner also had a duty not to take any action concerning that business that led to purely personal gain. (*Id*. at pp. 216-217.)

Next, the court stated that in determining the partners' duties concerning "unfinished business," the pertinent date was not the date that Rectifier discharged the firm but rather the date of its dissolution. Similarly, "[t]o determine whether business of a dissolved partnership is unfinished business, the court should look to the circumstances existing on the date of dissolution of the partnership, *not to events occurring thereafter*." (*Rosenfeld, supra*, 146 Cal.App.3d at p. 217, italics added.) More specifically, the court explained, case law " ' ". . . clearly indicates the line of demarcation between 'unfinished business,' *being business covered by contracts of employment at the time of dissolution*, and other matters, not covered by contracts of employment, but which *thereafter* become the subjects of contracts of employment through the goodwill previously existing between the partnership and the clients. As to the 'unfinished business,' a duty to perform services rests on the partnership at the time of dissolution and continues thereafter to rest on the partners or the surviving partner . . . ." ' " (*Ibid*., first italics added; quoting *Smith v. Bull* (1958) 50 Cal.2d 294, 303-304, quoting *Heywood v. Sooy* (1941) 45 Cal.App.2d 423, 426; see *Little v. Caldwell* (1894) 101 Cal. 553, 561.) In other words, " '[T]he test of what constitutes "unfinished business" of a partnership upon dissolution . . . is whether there existed, at the time of the dissolution, any contract of employment between the partnership and the clients for the performance by the partnership of the services thereafter claimed to be "unfinished business." ' " (*Rosenfeld, supra*, 146 Cal.App.3d at p. 217, quoting *Heywood v. Sooy, supra*, 45 Cal.App.2d at p. 426.)

With these principles in mind, the court concluded that since the firm had a valid, operative, and binding agreement to provide services to Rectifier on the date that firm dissolved, that agreement and the services to be provided under it constituted the firm's unfinished business. (*Rosenfeld, supra*, 146 Cal.App.3d at p. 217.)

Here, the trial court found that IT dissolved on March 31, 1995; and as of that date, IT had no settled contracts or formalized agreements to sell simulators to anyone. In essence, plaintiff argues that the record does not support the court's finding.

The record before us does not include any business records of IT, the University, Battelle, or Martin Marietta that constitute or represent or demonstrate the existence of a binding contract or agreement for the sale of a simulator.[8] Nor does the record contain

[8] In contrast, the record includes formal agreements between the New IT and the receiver for IN-MAR-TECH and between the New IT and Battelle.

evidence establishing that before it dissolved, IT became contractually obligated to provide a simulator to any of these entities or that they, in turn, became contractually obligated to pay IT money for a simulator or part of one or even the development of one.

We note that in January 1995, IN-MAR-TECH wrote to its IT partners concerning what it called the "U/Mass *Negotiation.*" (Emphasis added.) At that time, IN-MAR-TECH talked about terms that would have to be included in any contract. The memo explained that the University wanted to proceed with a simulator project but lacked the money. As a result, IN-MAR-TECH offered to shoulder some of the University's expected costs if the other IT partners agreed to some concessions. As noted, Sinacori rejected that proposal, and the record does not reveal that an alternative proposal and agreement among the IT partners or a subsequent binding agreement between IT and the University was reached.

The strongest circumstantial evidence that there might have been a binding contract was the University purchase orders and requisition, which predated dissolution. However, the record does not contain evidence concerning IT's procedure for selling simulators or the University's contracting procedures that would explain what the preparation of a purchase order means. Nor is there any evidence to support a finding that purchase orders cannot be signed in the absence of a formal contract or that the existence of a signed but undelivered purchase order necessarily means that IT had a binding agreement with the University. In our view, such findings would be pure speculation.

We note that during final arguments at trial, counsel for Voorhees acknowledged that a proposed but unsigned "Statement of Agreement" dated March 29, 1995, referred to the University purchase orders as "pending." However, counsel said that during Sinacori's deposition, Sinacori testified that a "pending" purchase order means only that it is "expected." Sinacori's expectancy about a purchase order hardly demonstrates that there was a contract. Indeed, that unsigned "Statement of Agreement" also said that there was a "pending" sale to Martin Marietta. However, the record does not contain evidence of a contract with Martin Marietta, and there never was a sale.

Plaintiff does not assert that the record contains a formal contract or agreement; nor does she cite any direct evidence that one existed at the time of IT's dissolution. Rather, plaintiff cites numerous documents and claims only they support an inference that before dissolution, a sale to the University was "under negotiation," and IT was "deeply involved" in that sale and another sale to Martin Marietta. She argues that ongoing negotiation for a future sale represented IT's unfinished business.[9]

Plaintiff's argument rests on a misreading of *Rosenfeld*, which she understands to mean that "unfinished business" includes both "business covered by contracts of employment at the time of dissolution," and "other matters, not covered by contracts of employment, but which thereafter become the subjects of contracts of employment." (*Rosenfeld, supra,* 146 Cal.App.3d at p. 217.) However, such a reading makes no sense

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[9] In support of her argument, plaintiff cites the following documents: (1) IN-MAR-TECH's January 17 memo, stating that the University, though "keen to move on," lacks funds to do so and proposing that IT partners accept certain conditions to enable a sale; (2) Sinicori's January 17 response to the IN-MAR-TECH memo, in which he refers to "the U/Mass contract"; (3) Sinacori's January 22 fax referring to the "U/Mass bid" and suggesting where the "U/Mass device" could be built; (4) the University's February 27, 1995; purchase orders dated and the requisition dated March 3; (5) Voohees's March 21 letter to IN-MAR-TECH opining that "future work beyond the University of Mass simulator appears to be in question at this time . . ."; (6) Sinacori's fax to IN-MAR-TECH dated March 28, telling IN-MAR-TECH that it can "get on with the Martin and U./Mass sales and beyond"; (7) an IN-MAR-TECH fax dated March 29, concerning its negotiations for the proposed sale of a simulator to Martin Marietta; and (8) the proposed "Statement of Agreement" dated March 29, 1995, stating that a University purchase order is "pending."

Plaintiff also cites the description of documents contained in a declaration that Sinacori's attorney had filed years before in opposition to Voorhees's motion for summary judgment. However, the documents themselves are not part of the record before us, and the record does not establish that counsel's declaration was admitted into evidence at trial or otherwise considered by the court. Under the circumstances, we decline to consider it.

either syntactically or logically. As the cases make clear, the date of dissolution marks a clear line of demarcation between unfinished business and new business—i.e., existing contracts and contractual obligations and other matters not yet subject contracts.

Thus, even though the documents cited by plaintiff reasonably imply that IT was actively pursuing efforts to sell simulators to the University and Martin Marietta when it dissolved, they do not establish that IT had formalized contracts or some sort of mutually enforceable agreements at the time of dissolution that would qualify the subsequent sales as IT's unfinished business.

In sum, therefore, plaintiff has not met her burden to demonstrate that there was a contract or that the trial court erred in finding that there was no contract. Accordingly, we reject plaintiff's claim that Voorhees breached his fiduciary duty by usurping IT's "corporate opportunities" or "unfinished business" with the University or Battelle.

VI. CONCEALMENT

Plaintiff contends that the trial court erred in finding the concealment claim barred by the statute of limitations.

"Under the statute of limitations, a plaintiff must bring a cause of action within the limitations period applicable thereto after accrual of the cause of action." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) The statute of limitations that applies to an action is governed by the gravamen of the complaint, not the cause of action pled. (*Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 786, fn. 2.) Here, the trial court implicitly determined that the gravamen of Sinacori's cause of action for concealment was fraud, that is, fraudulent concealment. We agree.

The elements of a cause of action for fraudulent concealment are: "(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. [Citation.]" (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612-613.)

In his cause of action for concealment, Sinacori alleged duty, concealment, misrepresentation, intent to defraud, lack of knowledge, detrimental reliance, and injury. Specifically, he alleged that after IN-MAR-TECH withdrew from IT, Voorhees solicited the withdrawal of other IT partners to dissolve IT. At that time, Voorhees falsely represented that Sinacori would be compensated for work he had performed on simulators that were sold to the University and Martin Marietta. Voorhees also concealed the fact that the New IT had an agreement to sell the simulator to the University, was negotiating other sales, and planned to continue marketing and selling simulators. Voorhees made the false representations and concealed material facts in order to induce Sinacori to withdraw from IT and defraud him of his share of the proceeds from the sales of simulators. In reliance on Voorhees, Sinacori withdrew from IT. Thereafter, Voorhees falsely represented that the New IT's subsequent simulator sale to the University did not include any of Sinacori's work product and, therefore, he was not entitled to any money. Voorhees also concealed the fact that the New IT had negotiated to purchase the simulator from IN-MAR-TECH and resell it to Battelle. Voorhees made these false representations to induce Sinacori's reliance on them. But for Voorhees's intentional and false representations and concealment of information, Sinacori would not have withdrawn from IT. And as a result of the misrepresentations and concealment, Sinacori suffered damages.

The statute of limitations for fraudulent concealment and intentional misrepresentation is three years. (Code Civ. Proc., § 338, subd. (d); *Snow v. A.H. Robins Co., Inc.* (1985) 165 Cal.App.3d 120, 135.) However, a cause of action for fraud does not accrue "until the discovery, by the aggrieved party, of the fact constituting the fraud or mistake." (Code Civ. Proc., §338, subd. (d).) A cause of action under this discovery rule accrues when the plaintiff actually discovers his or her cause of action or could have discovered it through the exercise of reasonable diligence. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109.) The limitations period begins once the plaintiff has notice or information of circumstances to put a reasonable person on inquiry. (*Id*. at pp. 1110-1111.) Thus, " 'subjective suspicion is not required. If a person becomes aware of facts which would make a reasonably prudent person suspicious, he or she has a duty to investigate further and is charged with knowledge of matters which would have been revealed by such an investigation.' " (*McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 108, fn. omitted, quoting *Mangini v. Aerojet-General Corp*. (1991) 230 Cal.App.3d 1125, 1150.) Conversely, once a plaintiff actually "has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." (*Jolly v. Eli Lilly & Co., supra,* 44 Cal.3d at p. 1111.)

Here, the court found, in essence, that more than three years before filing the complaint, Sinacori knew facts that would have made a reasonably prudent person suspicious of Voorhees and triggered a duty to inquire and investigate a possible claim of fraud or fraudulent concealment. The record supports such a finding.

In early 1995, Sinacori believed that he was entitled to compensation for the use of certain software included in any simulator. Moreover, at that time, he mistrusted Voorhees, opining that IT was mismanaged and that Voorhees could not treat the other IT partners fairly or objectively. By May, Sinacori knew that Voorhees had formed the New IT that then sold a simulator to the University. However, at that time, Voorhees informed Sinacori that the simulator did not incorporate Sinacori's software, and, therefore, he would not be entitled to anything from the sale. Concerning the proposed sale to Martin Marietta, Voorhees said he would try to recover the money that Sinacori expected from the sale. In September, the New IT sold that simulator, which it had bought from IN-MAR-TECH's receiver, to Battelle.

In a searing letter to his IT ex-partners dated June 26, 1996, Sinacori accused Voorhees of having contrived the withdrawal of IT partners so that he could reconstitute as a New IT, take advantage of IT's potential sales, and thereby deprive Sinacori of his share money that he would have received had IT sold the simulators. Sinacori expressed cynical surprise at how suddenly, the New IT announced that it had a new contract with the University, and he complained that Voorhees was not admitting that Sinacori was entitled to payment. Sinacori further complained that in November, he learned that the New IT had bought the simulator that IN-MAR-TECH had planned to sell to Martin Marietta from IN-MAR-TECH's receiver and then resold it at a profit to Battelle. Sinacori pointed out that he had warned the receiver that the receiver did not hold clear title to software used in the simulator, but at that time, the receiver said that Voorhees had reassured him that the New IT was working with Sinacori to resolve his claims concerning the software and had reached a preliminary agreement. Sinacori accused Voornees of lying to the receiver because they had no such agreement. Consequently, Sinacori argued that because the receiver sold the simulator, the New IT now had his software, and if the New IT used the software in any way, he was entitled to compensation. In all, he called the New IT "devious" and its "spokesman" a "liar."

The record supports a finding that before Sinacori wrote the June 1996 letter, he had good reason to be suspect Voorhees had contrived Sinacori's withdrawal from IT as a pretext to exclude him from the New IT and further to suspect that he suffered financial injury after the New IT was formed and sold simulators. However, even if we assume that Sinacori had no reason to suspect Voorhees or investigate before he wrote the June 26, 1996 letter, that letter and the angry accusations in it reflect that by that date, he actually suspected wrongdoing and knew facts that triggered a duty to investigate. Indeed, the letter was part of such an investigation. However, Sinacori did not file his complaint until November 1999, more than three years later. Accordingly, the record supports the court's finding that the claim for fraudulent concealment was time-barred.

Plaintiff claims that Voorhees's fraudulent concealment resulted in a continuing violation and injury that, in effect, continuously pushed the three-year statute of limitations forward. She argues that each day that Voorhees "spen[t] [the] money rightfully belonging to another, is a new start-date for the tolling of the statute of limitations." This theory that the statute of limitation for fraud can be extended indefinitely despite knowledge of the fraud is absurd on its face. It would apply to virtually every claim for money and, in effect, swallow the statute of limitations itself. Moreover, plaintiff cites no relevant authority to support it. Her reliance on *Charlotte Telecasters, Inc. v. Jefferson-Pilot Corp.* (4th Cir. 1976) 546 F.2d 570 is misplaced. That case involved allegations of a continuing conspiracy that violated anti-trust law and not a simple action for fraud resulting in money damages.

VII. CONVERSION

Plaintiff contends that the court erred in concluding that Voorhees was not liable for conversion.

The essence of conversion is "the wrongful exercise of dominion over the personal property of another." (*Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) "The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Ibid*.)

Sinacori based his conversion claim on allegations that he spent hundreds of hours (worth over $200,000 at $105 per hour) after IT was formed developing and creating software related to vehicle dynamics and vehicle systems models for the simulators that IT would market and sell. Under the IT Agreement, he had a 20 percent interest in profits earned by IT and was entitled to fair compensation for the time and effort he expended on behalf of IT. After IT dissolved, Voorhees sold two simulators, one to the University and the other to Battelle. Thus, under the Agreement, Sinacori was entitled to a share of the profits from those sales. However, Voorhees misappropriated and wrongfully diverted Sinacori's share of those profits.

The trial court concluded, in essence, that plaintiff had failed to establish the existence of personal property owned by Sinacori that Voorhees allegedly had wrongfully misappropriated. In particular, the court found that Sinacori's claim that Voorhees owed him money does not reflect personal property but only a debt. The court further found that Sinacori did not have a protected copyright interest in any intellectual property that may have been transferred along with the simulator sales to the University and Battelle.

Plaintiff claims the evidence established that Sinacori provided IT with the mathematical models used to develop the software used in the simulators, and under the Agreement, he had a right to 20 percent of the profit from sales. Thus, in accordance with Sinacori's allegations, plaintiff argues that the evidence established that Sinacori had a property interest in his share of the profits that the New IT reaped from its simulator sales.

In light of our discussion of plaintiff's claims concerning "corporate opportunity" and "unfinished business," the record does not support a finding that IT had any interest in profits from the New IT's sale of simulators. Thus, although Sinacori, as an original IT partner, was entitled to a 20 percent share of IT profits, that right did not attach to profits from the sales of the simulators by the New IT. Moreover, we agree with the trial court that even if Voorhees somehow personally had an obligation to pay Sinacori some of the profits that were reaped by the New IT from the simulator sales, that obligation represented a debt and not a "property interest" that could support a claim of conversion.

In *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445 (*Farmers*), an insurance company paid its insureds' claims. Under the policy, the company was entitled to recover from the insureds any money they received from third parties up to the extent of its payment. When the insureds recovered money, they refused to pay, and the company sued for conversion. However, the trial court granted the insureds' motion to dismiss that claim. (*Id*. at pp. 450-451.) On appeal, the court affirmed.

The court explained, " 'Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use. [Citations.]' [Citation.] Money can be the subject of an action for conversion if a specific sum capable of identification is involved. [Citation.]" (*Farmers*, *supra*, 53 Cal.App.4th at pp. 451-452.)

The court continued, "Neither legal title nor absolute ownership of the property is necessary. [Citation.] A party need only allege it is '*entitled to immediate possession at the time of conversion*. [Citations.]' [Citation.] *However, a mere contractual right of payment, without more, will not suffice*." (*Farmers*, *supra*, 53 Cal.App.4th at p. 452, second italics added.)

Thus, for example, in *Imperial Valley L. Co. v. Globe G. & M. Co.* (1921) 187 Cal. 352, a tenant agreed to pay a percentage of his crop to the landlord but then sold the entire crop to pay his personal debts. Although the landlord had a viable claim for breach of contract, he could not assert a claim for conversion because he did not have legal title to the proceeds from the crop sales or a lien on those proceeds. On the other hand, in *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, an attorney's agreement with his client gave him an express lien for attorney fees on any recovery by the client in a lawsuit. Thus, when the client got a new attorney, who settled the case and disbursed the entire settlement, the original attorney could assert a claim for conversion because the lien gave him a property interest in the settlement. (Cf. also, *McCafferty v. Gilbank* (1967) 249

Cal.App.2d 569 [disbursal of funds despite notice of an equitable lien supports claim for conversion].)

Here, the Agreement does not confer on the individual parties the right to legal title to proceeds from the sale of simulators, even if IT had sold any; nor does the Agreement provide each partner with an express lien for the payment of their contractual right to a share of sales and income. Moreover, Sinacori never alleged that he had a legal or equitable lien on the proceeds of simulator sales by IT or the New IT, and plaintiff has never sought to prove or argue that under the Agreement, Sinacori had a lien on or some other type of *property interest* in proceeds from simulator sales from IT or the New IT. Rather, at most, Sinacori alleged, and plaintiff claimed, only that Voorhees had an obligation to pay but failed to pay money that was owed to Sinacori.

Thus, the record supports the court's implicit finding that Sinacori did not have a property interest in the proceeds of the simulator sales that could support the claim of conversion. Moreover, plaintiff does not conclusively rebut this finding or demonstrate that it is wrong.

Plaintiff also claims the record establishes conversion based on Voorhees's misappropriation of his mathematical models.

Initially, we note that Sinacori did not specifically allege in the complaint that Voorhees misappropriated his property interest in some intellectual property. Nor did Sinacori allege that Voorhees had wrongfully used, disposed of, or sold mathematical models, engineering drawings, or ideas.

Despite Sinacori's failure to allege a misappropriation or wrongful use of intellectual property, the trial court apparently addressed and rejected this theory. As noted, the court found that although Sinacori's mathematical models were the bases for simulator software written by a third party, Sinacori had no copyright interest in that software. The court further opined that mathematical models and engineering diagrams represent ideas that are not subject to copyright or property subject to conversion.

Plaintiff does not cite any evidence that rebuts the trial court's finding or conclusively shows that Sinacori had a protected copyright interest in intellectual property that Voorhees then converted. Nor does plaintiff argue that Sinacori had such a copyright interest.[10] Rather than claim copyright interest, plaintiff argues that Sinacori did not need a copyright to recover damages for the alleged wrongful use of his intellectual property.[11] Relying primarily on *Desny v. Wilder* (1956) 46 Cal.2d 715 (*Desny*) and *Davies v. Krasna* (1966) 245 Cal.App.2d 535 (*Davies*), plaintiff argues that the Agreement created an express or implied contractual obligation to pay Sinacori for *the use* of his models in any simulators, and the sale of simulators containing software

[10] In his January 17, 1995, fax rejecting IN-MAR-TECH's proposal to assign money from a deal with the University to some of the IT partners, Sinacori reminded IN-MAR-TECH that the work he had done on "system dynamics" had been done under a subcontract directly with IN-MAR-TECH, those subcontracts were not assigned to anyone, and IN-MAR-TECH had agreed to pay him for the use of the software for the simulators. He asserted that IT would become obligated if it took over the sale to the University because "[t]he software was copyrighted with permission given to [IN-MAR-TECH] for its use. Permission was not given to assign or give in any way this software to anyone else. [¶] As such I.T. has an obligation to pay me money for its use in a simulator whether or not modifications to it are necessary or it is in violation of the copyright laws. I did not give the software away. I sold it to use to a specific party. I am well used to using the courts to protect my interests."

Notwithstanding Sinacori's statements, which are hearsay, the record does not contain any documentary evidence of an ownership or copyright interest in any software; and, as noted, plaintiff does not cite any evidence to rebut the trial court's finding that he lacked such an interest.

[11] It is not clear concerning exactly what the alleged intellectual property comprised. The record does not contain documents that constitute a reduction of mathematical ideas or models to some manual or disc or photograph or other corporeal or written form. Nor does it contain some other direct evidence of the models to suggest that they consisted of anything more than equations or diagrams referred to by the court in its statement of decision. And although there are references to models and software in various documents in the record, those references do not shed light on the subject other than to indicate that Sinacori developed models used to write software.

based on those models constituted a use and thus "was a breach of the implied and actual contract and subjected [Voorhees] to liability for damages."

In *Desny, supra*, 46 Cal.2d 715, the court explained that when a producer solicits and receives another person's idea and agrees to pay if he uses it, that idea, though not personal property, is protected, and the person is entitled to recover based on the breach of an express contract. Similarly, when a person offers an idea to a producer, and the producer accepts it knowing the person expects to be paid for its use, that idea, again, although not personal property, is protected, and the person can recover for breach of an implied contract. (*Id*. at pp. 733-734.) In each case, however, there must be a meeting of the minds concerning payment for use of the idea. (*Id*. at p. 735.)

In *Davies, supra*, 245 Cal.App.2d 535, a plaintiff submitted a story to the defendant on condition that he pay the reasonable value if he used it. Later, the defendant wrote a play with a plot similar to plaintiff's story. On appeal, the court reversed an order granting nonsuit on the plaintiff's claim for breach of confidence. The court found that the testimony of the parties and other witnesses could support the existence of an implied contract for compensation if the defendant used the story. The court further explained that such a contract, in turn, implied an obligation not to use the story for purely personal gain, and there was evidence that could support an inference that the defendant had done so. (*Id*. at pp. 538-550.)

Certainly, these cases support plaintiff's assertion that an un-copyrighted idea, even one that has been reduced to written form, can be the subject of an express or implied agreement to pay for its use. However, these involved claims for breach of contract and confidence and not tort claims for conversion. Neither case discusses the elements of conversion or explains the connection, if any, between claims of breach of contract and claims of conversion. Therefore, these cases are not pertinent authority on the subject. Moreover, their discussions of contracts, express and implied, for the use of an idea do not suggest that Voorhees was liable for conversion in this case or that the court erred in rejecting that claim.

Simply put, plaintiff's appellate theory of conversion is really just a contract claim in disguise: Voorhees was liable for conversion because he breached the express or implied promise in the Agreement to compensate Sinacori either for the time and effort he expended in creating the mathematical models or for the use of his models.

First, any claim that Voorhees breached an express or implied promise in the Agreement was resolved against plaintiff and eliminated from the case when the court granted summary judgment in favor of Voorhees on Sinacori's cause of action for breach of the Agreement. Consequently, issues concerning whether the Agreement expressly or impliedly contained a promise to pay Sinacori compensation related to his mathematical models were not before the court or considered by the court in ruling on the cause of action for conversion. Moreover, plaintiff may not attack the elimination of the contract claim under the guise of a challenge to the court's ruling on the conversion claim.

Furthermore, even if we assume for purposes of argument that the Agreement included a promise to pay for the use of the mathematical models, and Voorhees breached it, plaintiff cites no authority, and we are not aware of any authority, for the proposition that the breach of such a promise necessarily encompasses or establishes the conversion of personal property.

However, the Agreement itself does *not* expressly or implicitly promise to compensate Sinacori for either the time it took him to develop models or for their use in simulators that might later be sold. As discussed above, the Agreement provides only that Sinacori was entitled to a share of the profits if and when IT sold any simulators. Moreover, the limited record before us does not establish that (1) Sinacori offered to develop the models for IT with the understanding that IT would pay him a salary or wages or otherwise compensate him for the amount of time he spent developing them; (2) IT requested those models and accepted them with an understanding that Sinacori expected to be compensated for developing them or for their use; or (3) there was a meeting of minds between Sinacori and IT on such compensation. Plaintiff does not cite to evidence that would clearly establish such facts.

In short, the record does not establish Voorhees's liability for conversion of personal property or refute the court's contrary finding; and plaintiff has not met her burden to demonstrate that the court erred in rejecting that cause of action.

VIII. Adequacy of the Statement of Decision

Plaintiff contends that the court's statement of decision is inadequate, contradictory, vague, and factually inaccurate. However, the record does not reflect that plaintiff formally objected to the statement of decision on these or any grounds, and her failure to do so forfeits her objections on appeal. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1138; *Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140-141; *Estate of Fain* (1999) 75 Cal.App.4th 973, 994.)

IX. Disposition

The judgment is affirmed. Defendant Voorhees is entitled to his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.